8-11-2014

Plaintiffs' Answer to Defendant's Response to Court's Show Cause Order

No. 84362-7

SUPREME COURT OF THE STATE OF WASHINGTON

MATHEW & STEPHANIE McCLEARY, on their own behalf and on behalf of Kelsey & Carter McCleary, their two children in Washington's public schools;

ROBERT & PATTY VENEMA, on their own behalf and on behalf of Halie & Robbie Venema, their two children in Washington's public schools; and

NETWORK FOR EXCELLENCE IN WASHINGTON SCHOOLS ("NEWS"), a state-wide coalition of community groups, public school districts, and education organizations,

Plaintiffs/Respondents,

v.

STATE OF WASHINGTON,

Defendant/Appellant,

PLAINTIFFS' ANSWER TO DEFENDANT'S RESPONSE TO THE COURT'S SHOW CAUSE ORDER

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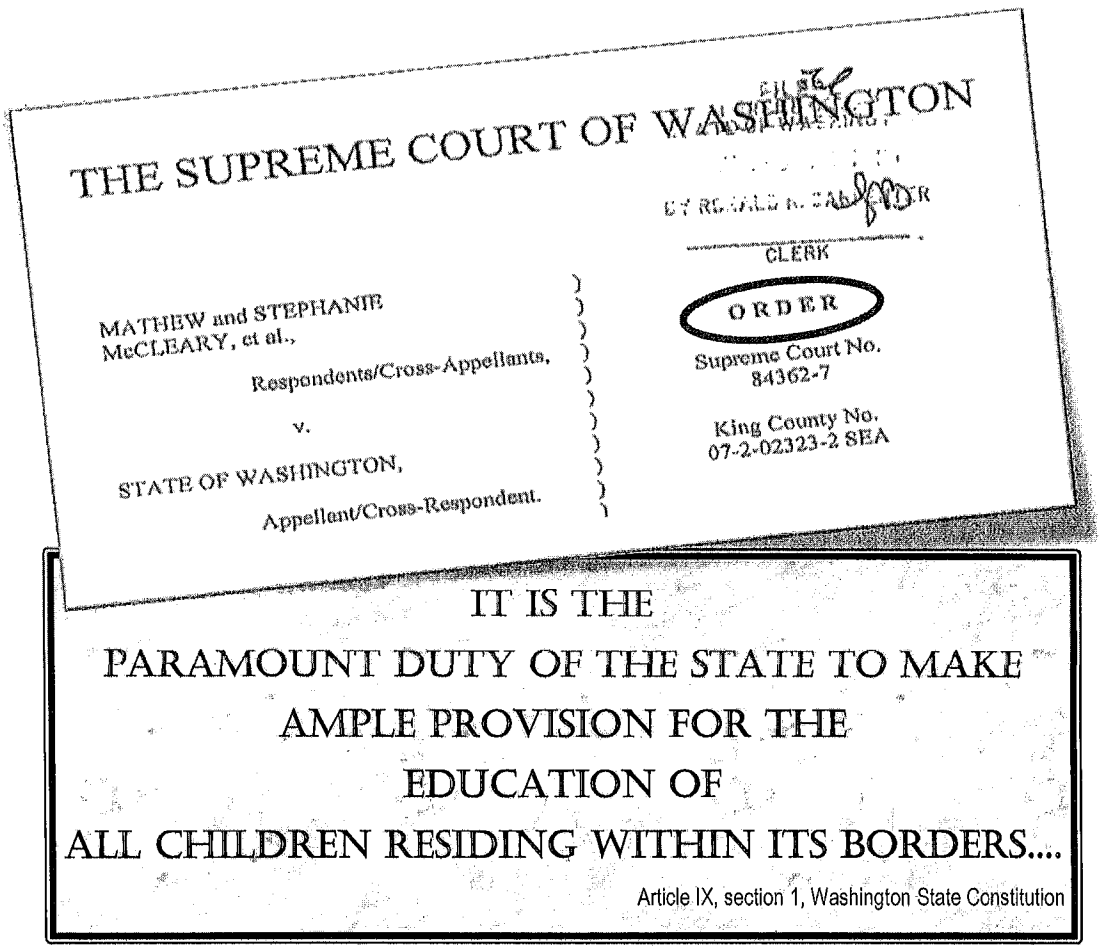

I. OVERVIEW OF PLAINTIFFS' ANSWER

This is plaintiffs' Answer to the issues raised in the State's Response to this Court's Show Cause Order.

A. Separation Of Powers *[Part III.A below]*

Constitutional rights either matter or they don't. If they don't, then the State's separation of powers argument is correct: Each branch has the power to cause State government to violate citizens' constitutional rights

without any effective interference from another branch. If legislative (or executive) branch officials fail to comply with court orders designed to bring a timely halt to the government's violation of constitutional rights, the judicial branch must stand on the sidelines, throw up its hands, and *hope* the government stops its constitutional violation someday.

Plaintiffs respectfully submit that the State's separation of powers conclusion is wrong.

Constitutional rights matter. They matter so much that powers are deliberately separated between three different branches to ensure that if one or two branches allow the government to violate citizens' constitutional rights, there remains a separate and independent third branch with the power to bring a halt to that violation. Separation of powers provides citizens the protection of an independent judiciary – not the empty words of an irrelevant one.

This case's February 2010 Final Judgment and January 2012 Supreme Court decision both held that State government is violating Washington schoolchildren's positive constitutional right to an amply funded K-12 education. Separation of powers ensures that each branch – including the judicial branch – has the power to halt State government's constitutional violation if the other branches do not.

In this particular case, the State insisted that its legislature's enactment of ESHB 2261 and SHB 2776 established needed education funding reforms based on its years of careful study, and committed to this Court that its legislature would be fully funding the significantly increased cost of those reforms by no later than the school year ending in 2018.

This Court accepted the State's assurance, and retained jurisdiction with a trust-but-verify approach. To ensure that State government stayed on track to cease its violation of children's positive constitutional right to an amply funded education by the promised 2017/2018 school year, this Court ordered the legislature to (1) demonstrate steady, real, and measurable ***progress*** toward completing its full funding by the promised school year, and (2) show it actually had a year-by-year ***plan*** for meeting that deadline.

It's now been 4½ years since the Final Judgment in this case held the State in violation of Article IX, §1. But the State's constitutional violation remains largely unabated. Plaintiffs respectfully submit that separation of powers does not divest this Court of the authority to issue remedial sanctions to coerce legislative compliance with the Orders this Court issued to ensure steady, real, and measurable progress stopping the State's violation of children's constitutional right to an amply funded K-12

education by the 2017/2018 school year. Instead, separation of powers ensures the judicial branch has the authority to stop the government's violation of constitutional rights when other branches do not. Separation of powers creates an independent judiciary – not an irrelevant one.

B. Contempt *[Part III.B below]*

The State does not dispute that its 63rd legislature knowingly violated this Court's January 2014 Order. Instead, the State argues the legislature's knowing violation of that Court Order wasn't "intentional".

That's sophistry only a lawyer could love. The 63rd legislature knew what this Court ordered. It knew before the end of this year's "regular" 60-day session that it had not complied with that Court Order. And it opted to quit and leave town without complying. One cannot say they didn't "intend" to do what they knowingly did.

The State alleges its legislators could not in 60 days resolve unspecified disagreements about *how* to comply with this Court's Order. But that does not negate the fact that they did intend to quit and leave town without complying. If they really want to comply but need more than 60 days to do so, they can meet in session more than just 60 days.

They simply don't want to. Recent history shows the legislature meets in additional, special sessions to comply with requests for

expensive, concrete action when they're made by an airplane company or sports team. It is not unreasonable to expect Washington lawmakers to meet in additional, special sessions to comply with Orders issued by the Washington Supreme Court.

The State's "only 60 days" excuse also ignores the fact that its legislature has had far more than 60 days to prepare for, discuss, and reach the "grand agreement" the State now claims its next legislature (64th) might come up with. The Final Judgment in this case was entered 4½ years ago (February 2010). This Court unanimously affirmed that Final Judgment's declaratory rulings over 2½ years ago (January 2012). And this Court's December 2012 and January 2014 Orders both reiterated the State (1) must make steady, real, and measurable ***progress*** each year to reach full funding by the promised 2017/2018 school year, and (2) must submit the State's actual ***plan*** ensuring that progress.

In short, it's not accurate for the State to say its legislature has had "only 60 days". The State's legislature has always known the legal rulings in this case. It has always known this Court's ensuing Orders. And when its 2014 "regular" session approached 60 days, the legislature knew it had not complied with this Court's January 2014 Order. But it opted to quit

and leave town anyway – fully knowing that it was not complying with the Supreme Court Order in this case.

Knowingly violating a Court Order is not accidental. It's intentional. And as a straightforward matter of law and fact, that's contempt. This Court should not pretend otherwise by refusing to call that contempt "contempt". Plaintiffs respectfully submit that the phrase "justice is blind" does not mean this Court closes its eyes to the knowing violation of a Court Order.

C. Appropriate Sanction *[Part III.C below]*

Plaintiffs agree with one of the State's points: the purpose of remedial contempt sanctions is not to punish prior violations, but rather to coerce prompt compliance. Indeed, plaintiffs' hope is that if this Court bluntly warns legislators of the types of coercive sanctions it can impose if non-compliance continues through the end of this year, the State's legislature will choose to comply instead of triggering such sanctions.

With that in mind, plaintiffs had previously requested a 3-part Order to coerce the 63rd legislature's compliance:

- **One:** Hold the State's legislature in contempt of court until it complies with the Court Orders in this case. *[This first part incorporates the "contempt purge" provision claimed necessary in the State's Show Cause Response.]*

- **Two:** Enjoin the State from making the unconstitutional underfunding of its K-12 schools worse by imposing any more unfunded or underfunded mandates on them. *[This second part prevents the State from making the unconstitutional status quo worse.]*

- **Three:** Give the State advance warning that if its 63rd legislature does not comply with this Court's January 2014 Order by the end of December 2014, this Court will in January 2015 issue strong judicial enforcement orders to coerce compliance. *[This third part listed examples of enforcement tools other courts have found appropriate to coerce elected officials to obey court orders concerning constitutional rights – tools which are also listed on page 4 of this Court's Show Cause Order.]*

Part III.C.2 below outlines why plaintiffs continue to believe this 3-part Order is appropriate to effectively impress upon State decision-makers the urgency of complying with Court Orders promptly (rather than "maybe next year"). Since this Court's Show Cause Order listed enforcement tool examples plaintiffs had previously noted, Part III.C.3 below answers the State's objections to those examples.

D. Timing of Sanction *[Part III.D below]*

This was not the first time the 63rd legislature failed to comply with a Supreme Court Order in this case. It failed to comply with this Court's December 2012 Order in its **2013** sessions. Then it failed to comply with this Court's January 2014 Order in its **2014** session.

The 63rd legislature will be replaced by the 64th legislature soon after the close of this year. To focus the coercive effect that the State acknowledges should be the purpose of a remedial Order in this case, this

Court should therefore compel the 63rd legislature to comply with this Court's January 2014 Order by the end of this year (December 31, 2014).

To ensure that no one underestimates the seriousness or urgency at hand, this Court should also make it unequivocally clear that if non-compliance continues past December 31, this Court will issue strong remedial sanctions in January 2015 to coerce compliance with the Court Orders in this case – and expressly warn the State's decision-makers that such remedial sanctions can include judicial enforcement tools such as the ones listed in this Court's Show Cause Order.

II. ISSUES PRESENTED

The State's Show Cause Response raises four basic issues:

1. ***Separation of Powers:*** Does separation of powers prevent this Court from issuing effective orders to stop the State's ongoing violation of Washington children's positive, constitutional right to an amply funded education?

2. ***Contempt:*** Was the 63rd legislature's knowing violation of this Court's January 2014 Order unintentional?

3. ***Sanctions:*** What (if any) sanctions are appropriate to coerce the State's compliance with this Court's rulings?

4. ***Timing:*** If any coercive sanctions are appropriate, what is their appropriate timing?

III. DISCUSSION

A. *Separation Of Powers* Does Not Bar Judicial Enforcement Of Court Orders Aimed At Stopping The Government's Ongoing Violation Of Constitutional Rights.

1. Our State Government Is Violating Washington Schoolchildren's Positive, Constitutional Right To An Amply Funded Education.

The February 2010 Final Judgment and January 2012 Supreme Court decision in this case confirmed the legal meaning of – and the State's violation of – the State's ***paramount*** duty to ***amply*** fund the education of ***all*** Washington children.[1] The State's Show Cause Response accordingly does not dispute that State government is violating schoolchildren's positive, constitutional right to an amply funded education.

2. Powers Are Separated To Stop Government Violations Of Constitutional Rights – Not To Grant The Legislative Branch Immunity To Perpetuate Them.

Constitutional rights matter. So much that powers are deliberately separated between three different branches to ensure that if one or two branches allow the government to violate constitutional rights, there remains a separate and independent third branch with adequate power to bring a halt to that violation. Separation of powers therefore assures

[1] *E.g., Plaintiffs' 2014 Post-Budget Filing at pp.2-5. The State's Show Cause Response accordingly acknowledges that "The State's constitutional duty is to provide ample funding for basic education" and that "The Legislature is well aware of its constitutional duty". E.g., State's Show Cause Response at pp.30 & 16.*

citizens' constitutional rights the protection of an independent judiciary – not the empty words of an irrelevant one.

American jurisprudence accordingly recognizes that separation of powers does not divest courts of the power to bring a halt to the government's violation of constitutional rights.[2] As this Court has aptly explained in this case, one of the judicial branch's central roles is to serve as "a check on the activities of another branch" – even when "contrary to the view of the constitution taken by another branch."[3]

Unprecedented: The State notes this Court has never held the State in contempt for the inaction or action of its legislature, implying that this is "because of separation of powers concerns."[4] But if this Court has not held the legislature in contempt for knowingly violating a Supreme Court Order before, it's not "because of separation of powers concerns."

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[2] *Plaintiffs' **2013** Post-Budget Filing at pp.39-44 & nn.121, 127-129 (citing Lake View School District No. 25 v. Huckabee, 91 S.W.3d 472, 484 (Ark. 2002), cert. denied, 538 U.S. 1035 (2003); McCleary, 173 Wn.2d at 515, 544 & 546; Columbia Falls Elementary Sch. Dist. No. 6 v. Montana, 109 P.3d 257, 261 (Mont. 2005); Montoy v. Kansas, 112 P.3d 923, 930-931 (Kan. 2005); Cooper v. Aaron, 358 U.S. 1, 18, 78 S.Ct. 1401, 3 L.Ed.2d 5 (1958); Spallone v. United States, 493 U.S. 265, 281, 301-02, 110 S.Ct. 625, 107 L.Ed.2d 644 (1990) (Brennan, J., dissenting); Robinson, 358 A.2d at 459 (N.J.)); Plaintiffs' **2014** Post-Budget Filing at pp.40-42 & nn.118-126 (discussing the same).*

[3] *McCleary, 173 Wn.2d at 515 (citing Seattle School District, 90 Wn.2d at 496; In re Juvenile Director, 87 Wn.2d 232, 241, 552 P.2d 163 (1976); U.S. v. Nixon, 418 U.S. 683, 703, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974); Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176, 2 L.Ed. 60 (1803)); see also State v. Rice, 174 Wn.2d 884, 900-901, 279 P.3d 849 (2012) (the constitutional division of government into three branches is for the protection of individuals against centralized authority and abuses of power); see also Plaintiffs' **2013** Post-Budget Filing at p.40, n.122 (discussing case law).*

[4] *State's Show Cause Response at p.9.*

It's because the Washington legislature hasn't so knowingly violated a Supreme Court Order like this before.

The State's argument that it is unprecedented for this Court to hold the Washington legislature in contempt for violating a Supreme Court Order accordingly lacks legal significance. It's akin to a first-time bank robber saying it is "unprecedented" for a court to convict him of bank robbery. A factually true statement – but legally irrelevant to his being guilty of robbing the bank.

Tax & Spend Authority: The State also argues that separation of powers prevents this Court from effectively enforcing schoolchildren's positive constitutional right to an amply funded K-12 education because the constitution vests general taxation and appropriation authority in the legislative branch.[5]

Plaintiffs do not disagree that the legislature has these two powers to establish the *means* of amply funding the State's K-12 public schools. But the legislature's so having the constitutional power to amply fund the State's K-12 public schools does not negate this Court's authority to require the legislature to *act* to fulfill its paramount constitutional duty to exercise that power to amply fund the State's K-12 public schools.

[5] *State's Show Cause Response at pp.10-11 (citing Article VII, §5 and Article VIII, §4).*

Constitutional Respect: The State claims holding the 63rd legislature in contempt for opting to leave town before it complied with the Court Orders in this case "would not give appropriate constitutional respect to the legislative process, to the Legislature's representative role, or to representative democracy under our constitution."[6]

But the State does not (because it cannot) cite support for its essential premise that opting to violate a Court Order regarding the State's ongoing violation of the paramount constitutional right of approximately 1 million Washington schoolchildren is entitled to constitutional respect as a legitimate part of the legislative process, the legislature's representative role, or representative democracy.

Undermining Legitimate Operations: The State similarly argues that holding the legislature in contempt for opting to leave town instead of complying with the Court Orders in this case is improper because separation of powers principles prohibit "checks by one branch [that] undermine the operation of another branch".[7]

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[6] *State's Show Cause Response at p.12.*

[7] *State's Show Cause Response at p.12 (citing Brown v. Owen, 165 Wn.2d 706, 719, 206 P.3d 310 (2009) and In re Juvenile Director, 87 Wn.2d 232, 243, 552 P.2d 163 (1976)).*

But the State does not (because it cannot) cite support for its essential premise that holding the legislature accountable for opting to violate a Court Order regarding the State's ongoing violation of the paramount constitutional right of approximately 1 million Washington schoolchildren undermines a constitutionally proper operation of the legislative branch.

Legislature's Prerogative: The State also argues this Court cannot cite or sanction the legislature for opting to leave town instead of complying with the Court Orders in this case because separation of powers principles prohibit the judicial branch from undertaking activity that "threatens the independence or integrity or invades the prerogatives of another [branch]."[8]

But the State does not (because it cannot) cite support for its essential premise that the constitution grants the legislative branch the "prerogative" or "independence" to let the State continue violating the paramount constitutional right of approximately 1 million schoolchildren if it wants to, or that a court's requiring the legislative branch to stop that constitutional violation threatens the legislative branch's "integrity".

[8] *State's Show Cause Response at p.12 (citing Brown, 165 Wn.2d at 718 and Carrick v. Locke, 125 Wn.2d 129, 135, 882 P.2d 173 (1994)).*

Judicial Integrity: Finally, the State also argues this Court cannot cite or sanction the legislature for opting to leave town instead of complying with the Court Orders in this case because the separation of powers doctrine's "primary concerns are that the judiciary not be drawn into tasks more appropriate to another branch and that [the judiciary's] institutional integrity be protected".[9]

But those concerns do not support the State's conclusion. Enforcing a Court Order that requires the legislative branch to *act* to amply fund the State's K-12 public schools does not require this Court to undertake the task of determining the *means* that the legislature will employ to raise and appropriate that ample funding. And if this Court now tells Washington schoolchildren and their parents that this Court was "only kidding" when it issued its prior rulings in this case, that does not protect the judiciary's institutional integrity.

Conclusion: In short, the State's arguments do not support its separation of powers defense to this Court calling contempt "contempt".

[9] *State's Show Cause Response at p.12 (citing Brown, 165 Wn.2d at 719 and Carrick, 125 Wn.2d at 136).*

3. Separation Of Powers Does Not Prevent This Court From Issuing Effective Enforcement Orders To Stop Our State Government's Ongoing Violation Of Washington Schoolchildren's Positive, Constitutional Rights.

Plaintiffs' prior briefing discussed cases from Arkansas, Montana, Kansas, Kentucky, and New Jersey agreeing that separation of powers does not prevent the judicial branch from giving force and effect to schoolchildren's constitutional rights.[10] To the contrary, that is the judicial branch's primary responsibility and duty.[11]

The State's Show Cause Response suggests this Court should ignore such cases because the Kansas Supreme Court simply "dismissed separation of powers concerns in reliance on a student note in a law review arguing that equitable power is appropriate if exercised after legislative noncompliance."[12] Reading the Kansas Supreme Court's

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[10] *Plaintiffs' **2013** Post-Budget Filing at pp.39-44 & nn.121, 122, 127 & 129 (citing Lake View School District No. 25, 91 S.W.3d at 484 (Ark.); Columbia Falls Elementary Sch. Dist. No. 6, 109 P.3d at 261 (Mont.); Rose v. Council for Better Education, 790 S.W.2d 186, 208-209 (Ky. 1989); Montoy, 112 P.3d at 930-931 (Kan.); Robinson, 358 A.2d at 459 (N.J.)); Plaintiffs' **2014** Post-Budget Filing at pp.40-41 & nn.118, 121 & 122 (referencing the same); see also Abbott ex rel. Abbott v. Burke, 20 A.3d 1018, 1024 (N.J. 2011) (observing in education funding case that, "Like anyone else, the State is not free to walk away from judicial orders enforcing constitutional obligations") (cited in Plaintiffs' **2013** Post-Budget Filing at p.46 & n.140 and then in Plaintiffs' **2014** Post-Budget Filing at p.47 & n.145).*

[11] *Id.; accord, McCleary, 173 Wn.2d at 515, 544 & 546 (discussed in Plaintiffs' **2013** Post-Budget Filing at p.39 & n.121).*

[12] *State's Show Cause Response at p.21.*

decision, however, confirms the inaccuracy of that representation. *Montoy v. Kansas*, 112 P.3d 923, 929-931 (Kan. 2005).[13]

B. *Contempt:* The Knowing Violation Of A Court Order Is An Intentional Violation Of A Court Order.

1. The 63rd Legislature Knows What It Was Ordered To Do.

This Court's January 2014 Order reiterated to the State's 63rd legislature that:

> The need for immediate action could not be more apparent. Conversely, failing to act would send a strong message about the State's good faith commitment toward fulfilling its constitutional promise.[14]

This Court accordingly ordered the State legislature's **2014** session to:

> (1) take "immediate, concrete action" to make "real and measurable ***progress***, not simply promises" to meet the 2018 full funding deadline in this case; and
>
> (2) submit a "complete ***plan*** for fully implementing its program of basic education for each school year between now and the 2017-18 school year" – including "a phase-in schedule for fully funding each of the components of basic education" identified in ESHB 2261 and SHB 2776.

January 2014 Order at p.8 (emphasis added).[15]

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[13] *Accord, Gannon v. Kansas, 319 P.3d 1196, 1252 (Kan. 2014) (approving of order to enjoin operation of specific education funding statutes if legislature did not cure constitutional violation by July 1, 2014) and at 1216-1231 (confirming court's duty to safeguard constitutional rights). A little over a month later, the State legislature enacted legislation to comply with the court's order. See "Kansas: Governor Signs School Funding Bill",* New York Times, *April 22, 2014, at A14 http://www.nytimes.com/2014/04/22/us/kansas-governor-signs-school-funding-bill.html?partner=rss&emc=rss&_r=1.*

[14] *January 2014 Order at p.8 (underline added).*

[15] *The State acknowledges knowing about this Court's **progress** requirement (e.g., State's Show Cause Response at p.5, noting that this Court's prior July 2012 Order ordered that "the State must 'show real and measurable progress' toward achieving full*

The State's Show Cause Response repeatedly assures this Court that its legislature is well aware of that Court Order:

- "Both houses seriously discussed the order";
- "Both the legislative and executive branches are well aware of the Court's holdings in *McCleary* and its directives that action be taken";
- "[T]he need to respond to the '*McCleary* decision' is known to every legislator and every state budget analyst";
- "The 2018 deadline for full compliance with article IX, section 1 looms large."[16]

This accordingly is not a case where the maxim that "ignorance of the law is no excuse" need apply – for the 63rd legislature was not at all ignorant of what this Court had ordered it to do.

2. The 63rd Legislature Nonetheless Left Town Knowing It Had Not Complied With This Court's Order.

The State's July Show Cause Response does not dispute that its legislature failed to comply with this Court's January 2014 Order.[17]

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*compliance" by the 2018 deadline in this case), as well as knowing about this Court's complete **plan** requirement (e.g., State's Show Cause Response at p.6, stating with respect to this Court's January 2014 Order that "The Court ordered the State to submit ... a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year that addresses each of the areas of K-12 education identified in ESHB 2261, as well as the implementation plan called for by SHB 2776 [Laws of 2010, ch.236] that includes a phase-in schedule for fully funding each of the components of basic education." (internal quotation marks omitted). Although the State sometimes suggests that this case's 2017/2018 school year deadline was made up by this Court (e.g., State's Show Cause Response at p.12 referring to this case's "judicially specified timeframe" and at p.16 referring to "the 2018 deadline this Court established"), the State elsewhere admits that that 2018 deadline had been previously promised by the State's legislature (State's Show Cause Response at p.15, acknowledging "The Court adopted the 2018 deadline the Legislature had set for itself to accomplish the tasks set before it").*

[16] *State's Show Cause Response at pp.11, 2, 14, & 14.*

Nor does the State's July Show Cause Response dispute that its legislature knew it had failed to comply with that Order when it opted to adjourn and leave town on March 13, 2014 (instead of continuing in additional, special sessions as it had done in prior years to resolve matters the legislature deemed urgent or important).[18]

In short, the State's 63rd legislature knowingly failed to comply with this Court's January 2014 Order.

3. Knowingly Violating A Court Order Is Contempt.

The State's Show Cause Response acknowledges that its legislature knows what contempt is – for it quotes the RCW provision its legislature enacted defining contempt to include "intentional... [d]isobedience of any lawful judgment, decree, order, or process of the court."[19]

The Attorney General argues, however, that the legislature's knowing violation of the Court Order in this case isn't contempt because an entity's knowing violation of a court order isn't "intentional" if that

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[17] *See also Plaintiffs' preceding May 2014 Post-Budget Filing at pp.7-29.*

[18] *See Plaintiffs' preceding May 2014 Post-Budget Filing at pp.30-33 & p.48; March 13, 2014 date provided at Washington State Legislature Home Page [http://www.leg.wa.gov/pages/home.aspx].*

[19] *State's Show Cause Response at p.7 (citing RCW 7.21.010(1)(b)). Although the State legislature's knowing violation of the Court Orders in this case constitutes contempt under this Court's inherent contempt authority as well, the statutory contempt authority cited by the State alone suffices to recognize that one's knowing violation of a court order is contempt in Washington.*

violation resulted from the entity's decision-makers having a disagreement on *how* to comply.[20]

Really? Is the Attorney General really taking the position that, for example:

- If a company knowingly fails to comply with a court order because the members of its board of directors couldn't agree on *how* to comply at their regularly scheduled board meeting, the entity's knowing failure to comply isn't contempt because it's not "intentional".
- If a partnership knowingly fails to comply with a court order because its partners couldn't agree on *how* to comply when they met to discuss that court order, the entity's knowing failure to comply isn't contempt because it's not "intentional".
- If a school district knowingly fails to comply with a court order secured by the Attorney General because school board members couldn't agree before summer vacation on *how* to comply (e.g., draw from emergency reserves, ask voters for levy funding, lay off staff, reduce salaries, sell property, raise fees, etc.), he'll maintain that the entity's knowing failure to comply isn't contempt because it's not "intentional".

The State's argument does not make logical sense. It asserts in this show cause proceeding that "the Legislature...is the principal actor".[21] But the principal actor cannot say it didn't intend to do what it knowingly did.

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[20] *E.g., State's Show Cause Response at p.1 ("The Legislature's failure to produce a plan was not willful noncompliance with the Court's order, but the product of legitimate policy disagreements that have not yet been resolved"), p.10 (the State's failure to comply with the Court Orders in this case "was not intentional disobedience, but the consequence of honest political disagreement in the legislature"), and pp.26-27 ("the Legislature's failure to produce a plan resulted not from an intent to ignore the Court's order, but rather from disagreement as to how to comply with the underlying obligations this Court laid out in McCleary") (emphasis in original).*

[21] *State's Show Cause Response at p.26.*

Nor does the State's argument make legal sense. Even the cases cited by the State recognize that if a person or entity knows of a court order and intentionally acts (or fails to act) in a manner that violates that order, it acts "intentionally" under the contempt statutes.[22] Although the State suggests repetitive disobedience is important to finding intent, the real issue in its cited cases was the appropriate sanction – not whether the violations were intentional.[23] Here, the State cannot genuinely dispute that its legislature didn't really "intend" to quit and leave town on March 13 even though it knew it hadn't complied with the Court Orders in this case.[24]

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[22] *State's Show Cause Response at pp.8-9 (citing, e.g., In re Estates of Smaldino, 151 Wn.App. 356, 366, 212 P.3d 579 (2009) [attorney intentionally acquired security interest in property; therefore, the attorney's disobedience of a court order prohibiting the property interest was also intentional, even though the attorney had not read the court order]; In re Koome, 82 Wn.2d 816, 514 P.2d 520 (1973) [doctor intentionally performed abortion, which violated court order]; State v. Dugan, 96 Wn.App. 346, 352, 979 P.2d 885 (1999) [although a court order was not at issue, intent element was undisputed because the attorney "certainly intended to ask the offending question"]).*

[23] *State's Show Cause Response at p.9 (citing Bering v. SHARE, 106 Wn.2d 212, 220 & 247, 721 P.2d 918 (1986) [each violation was knowing and intentional]; In re Marriage of Eklund, 143 Wn.App. 207, 212, 177 P.3d 189 (2008) [each violation of parenting plan was intentional, even though consolidated into one contempt finding, for purposes of contempt proceedings under RCW 26.09.160]).*

[24] *If the State is arguing that it can't possibly intend its actions (or inaction) within the meaning of the contempt statutes, then the Court's inherent contempt authority may be appropriate. See Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 424, 63 P.2d 397 (1936) (power of contempt is lodged permanently with the court, and the legislature may not, by its enactments, deprive the court of that power or render it ineffectual); State v. Ralph Williams' N.W. Chrysler Plymouth, Inc., 87 Wn.2d 327, 335-337, 553 P.2d 442 (1976) (affirming use of court's inherent authority to order remedial sanctions); see also Bresolin v. Morris, 86 Wn.2d 241, 250, 543 P.2d 325 (1975) (observing that State agency official "could be held guilty of civil contempt and a fine imposed for failure to*

4. The State's "Only 60 days" Claim Is Not A Valid Excuse.

The State's Show Cause Response blames this year's 60-day "short session" as being the devil that made legislators violate this Court's Orders, alleging that legislators could not in 60 days resolve "good faith" (but unexplained) disagreements over *how* to comply.[25] (Plaintiffs note that of the four bills cited by the State's Show Cause Response to prove the full legislature's serious discussion and good faith failure to pass legislation concerning this Court's Order, only <u>one</u> was ever even submitted for a vote in the Senate, and <u>none</u> were ever submitted for a vote in the House.[26] Similarly, the three documents the State's Show Cause Response cites as proof of legislators' discussions today are not

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comply, regardless of good faith" for not following statutory mandate and Court's order, and ordering monthly progress reports on compliance).

[25] *E.g., State's Show Cause Response at pp.1-2 ("The Court should not misconstrue the failure of political consensus in a short legislative session as a lack of will or determination going forward"), p.6 ("a short legislative session normally includes only minor budget adjustments, not major changes") & pp.26-27 (legislature's failure to comply with this Court's Order resulted from legislators' "disagreement as to <u>how to comply</u>"). Plaintiffs' lead counsel was accordingly going to begin this section by quoting that "devil made me do it" line Flip Wilson used to say on Rowan & Martin's Laugh-In, but younger counsel convinced him that he's probably one of the few people around today who ever watched – never mind still remember – that 1967-1973 television show.*

[26] *Compare State's Show Cause Response at p.11 (citing SHB 2792, SSB 5881, ESSB 6499, and SB 6574 to show the full legislature's serious discussion and good faith failure to pass legislation concerning this Court's Order) with SHB 2792 (received March 1, 2014 hearing in House Appropriations Committee where all witnesses testified in favor, but was never submitted for a vote in House or Senate); SSB 5881 (also never submitted for a vote in House or Senate); ESSB 6499 (never submitted for a vote in the House); SB 6574 (no committee hearing and never submitted for a vote in House or Senate). Bill history may be accessed at the legislature's Bill Summary website by selecting the 2013-14 Biennium and keying in the bill number, available at http://dlr.leg.wa.gov/billsummary/.*

even legislators' discussions – they are materials by the Governor's Office of Financial Management (OFM).[27])

The State's "only 60 days" claim is not a valid excuse for at least three reasons.

First, even if the State's "good faith disagreements" allegation were true, it would not negate the fact that legislators undeniably intended to adjourn and leave town without complying with this Court's Order.

Second, leaving town until 2015 was not the only option – for if legislators really need more time to comply with the Court Orders in this case, they can meet in session more than 60 days. As Plaintiffs' 2014 post-budget filing previously explained, State legislators meet in additional, special sessions to comply with requests for expensive, concrete action that are made by an airplane company or sports team. It is not unreasonable to expect lawmakers to meet in additional, special sessions to obey the law – i.e., to comply with Orders issued by their Supreme Court.

Third, the State's legislature has had years – not "only 60 days" – to prepare for, talk about, and reach the "grand agreement" the State now claims its next legislature might come up with to address the Court rulings

[27] *Those three OFM documents are cited at State's Show Cause Response at p.14, n.14.*

in this case. This case's binding Final Judgment was entered against the State 4½ years ago.[28] This Court unanimously affirmed that Final Judgment's declaratory rulings over 2½ years ago.[29] And this Court's December 2012 and January 2014 Orders reiterated that the State (1) must make steady, real, and measurable ***progress*** each year to reach full funding by the 2017/2018 school year deadline, and (2) must submit the State's actual ***plan*** for that steady, real, and measurable progress. It's simply not accurate to suggest the State was given "only 60 days" to address the court rulings in this case.

5. The Legislature's Knowing Violation Of This Court's Order Was Contempt.

The State legislature's knowing violation of the Court Order in this case was not accidental. It was intentional. And as a straightforward matter of law and fact, that's contempt. Plaintiffs respectfully submit that Washington law applies to <u>all</u> Washington citizens – including Washington lawmakers. And this Court should not conclude otherwise by refusing to call contempt "contempt" when lawmakers are the ones who

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[28] *CP 2866-2971 (February 2010 Final Judgment). As plaintiffs' prior filings have previously explained, that Final Judgment remained a binding court judgment during the State's subsequent appeal. Plaintiffs' **2012** Post-Budget Filing at p.40 & nn.110-111; Plaintiffs' **2014** Post-Budget Filing at p.36 & n.109 (referencing same).*

[29] *<u>McCleary v. State</u>, 173 Wn.2d 477, 269 P.3d 227 (2012). See also, Plaintiffs' **2013** Post-Budget Filing at p.1 & n.1; Plaintiffs' **2014** Post-Budget Filing at p.2 & n.2 (referencing same).*

knowingly violate a court order. The State's arguments to the contrary give a new – and incorrect – meaning to the phrase "justice is blind".

C. *Sanctions:* The 3-Part Enforcement Order Previously Requested By Plaintiffs Remains The Appropriate Sanction At This Time.

1. The State Admits The Purpose Of A Remedial Sanction Is To Coerce Compliance With The Court Rulings In This Case.

Plaintiffs agree with one of the State's points about sanctions – namely, that the purpose of a remedial sanction is to "**coerce** performance" of the act ordered by the court.[30]

2. The 3-Part Order Requested In Plaintiffs' 2014 Post-Budget Filing Is Still Appropriate At This Time To Coerce Compliance.

Plaintiffs continue to believe that if this Court unequivocally states the types of coercive sanctions it can impose if the 63rd legislature continues its noncompliance through the end of this year, the State will opt to comply with this Court's January 2014 Order instead of continuing its noncompliance. To that end, plaintiffs' 2014 post-budget filing requested a 3-part Order to compel steady, real, and measureable progress complying with the Court rulings in this case:

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[30] *State's Show Cause Response at p.8 (emphasis added). The State acknowledges that contempt sanctions can be remedial or punitive, that with respect to remedial sanctions this Court "has civil contempt power to coerce a party to comply with its lawful order or judgment", and that "A civil contempt sanction will stand as long as it serves coercive, not punitive, purposes, and as long as it contains a purge clause allowing a contemnor to avoid a finding of contempt and/or sanction for noncompliance". Id.*

- **One:** Hold the State's legislature in contempt of court until it complies with the Court Orders in this case.[31]

As Part III.B above confirms, "contempt" is precisely what the 63rd legislature's knowing violation of this Court's Order is. And by providing that this Court's contempt finding will be lifted once that Court Order is complied with, this first part of plaintiffs' 3-part proposal incorporates the "contempt purge" provision the State claims should be included.[32] Plaintiffs recognize that many legislators may find it uncomfortable for this Court to hold their legislature in contempt until the legislature complies with the Court Orders in this case. But that's the whole point of remedial orders: to coerce compliance.

- **Two:** Enjoin the State from making the unconstitutional underfunding of its K-12 schools worse by imposing any more unfunded or underfunded mandates on them.[33]

The State has known that it is unconstitutionally underfunding its K-12 schools ever since at least the February 2010 Final Judgment in this case. And as plaintiffs' post-budget filings have confirmed, the State is still far behind in filling its unconstitutional underfunding shortfall.[34] This

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[31] *Plaintiffs' **2014** Post-Budget Filing at p.49.*

[32] *State's Show Cause Response at p.8.*

[33] *Plaintiffs' **2014** Post-Budget Filing at p.49.*

[34] *E.g., Plaintiffs' **2014** Post-Budget Filing at pp.10-29; Plaintiffs' **2013** Post-Budget Filing at pp.12-38 & Appx. B.*

Plaintiffs further note that while the State's 2014 Post-Budget Reply brief represented to this Court that the Highly Capable Program is now fully funded with about $9.6 million/year, the State's own reports confirm that this funding covers less than 17% of that program's actual costs. See, e.g., OSPI's Highly Capable Students Report 2013 at p.8 (Highly Capable Program cost participating districts $56,817,841 in 2011–

second part of plaintiffs' 3-part proposal prevents the State from making the unconstitutional underfunding status quo of its K-12 schools worse by imposing a new mandate on its unconstitutionally underfunded schools without funding that new mandate's corresponding cost.

This second part also aligns with ESHB 2261's assurance (and SHB 2776's confirmation) that no new requirements would be imposed on school districts without an accompanying increase in resources.[35]

The State nonetheless objects to this second part claiming it doesn't know what an unfunded or underfunded mandate is, or what "specific harm" this second part would be designed to prevent.[36]

That objection lacks common sense. An unfunded or underfunded mandate is a mandate that is unfunded or underfunded. It's a mandate the State imposes on its school districts without funding the corresponding

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12), available at http://www.k12.wa.us/LegisGov/2013documents/HighlyCapableDec2013.pdf; December 2010 Report to the Washington State Legislature and Quality Education Council, Highly Capable Program Technical Working Group Recommendations at p.27 (estimating Total School District Highly Capable Program Costs to be $58,790,339/year), available at http://www.k12.wa.us/HighlyCapable/Workgroup/.

[35] *Laws of 2009, ch. 548, §112(1) (ESHB 2261); Laws of 2010, ch. 236, §5(1) (SHB 2776); RCW 28A.290.020(1) (current codification of related ESHB 2261 and SHB 2776 sections); see also, e.g., City of Tacoma v. State, 117 Wn.2d 348, 358, 816 P.2d 7 (1991) (State responsible for reimbursing city for the cost of providing increased levels of domestic violence prevention services that the legislature mandated upon cities by statute). As the prior filings in this case illustrate, however, the State has nonetheless done otherwise – imposing additional costs on its public schools without corresponding funding. Plaintiffs' **2013** Post-Budget Filing at pp.15-16.*

[36] *State's Show Cause Response at pp.25-26 & n.24 (citing Kitsap County v. Kev, Inc., 106 Wn.2d 135, 143, 720 P.2d 818 (1986) and CR 65(d)).*

costs of that mandate. And the "specific harm" this would prevent is self-evident: it prevents the State from digging the unconstitutional underfunding hole it has already dug for its K-12 schools any deeper.

The State's claim of not knowing what an unfunded mandate is also ignores the fact that the State and its legislature are fully familiar with this concept. For example, the State's unfunded mandate statute prohibits the legislature from requiring local governments to provide new programs or increased service levels without also funding those new programs or increased service levels.[37] Those are unfunded or underfunded mandates.

- **Three:** Give the State advance warning that if its 63rd legislature does not comply with this Court's January 2014 Order by December 31, 2014, this Court will in January 2015 issue strong judicial enforcement orders to coerce compliance.[38]

Even though this Court's January 2014 Order required the State's legislature to comply during its 2014 "short session", plaintiffs' focus here is not on punishing the 63rd legislature for its violation of that Court Order (or for its prior violation of this Court's December 2012 Order). Instead, consistent with the State's acknowledgement that the purpose of a

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[37] *RCW 43.135.060(1); see also, e.g., City of Tacoma, 117 Wn.2d at 358 (State responsible for reimbursing city for the cost of providing increased levels of domestic violence prevention services that the legislature mandated upon cities by statute).*

[38] *Plaintiffs' **2014** Post-Budget Filing at p.49. This third part followed after a list of several examples of enforcement tools recognized by other courts. Id. at p.49. Those tools are also noted in this Court's Show Cause Order.*

remedial sanction is to **coerce** prompt compliance, the third part of plaintiffs' 3-part proposal gives the 63rd legislature more time (until near the end of its final year) to comply. Plaintiffs' hope is that if this Court bluntly warns State officials of the types of tough coercive sanctions this Court can impose if the State allows noncompliance to continue through the end of this year, the State's legislature will opt to comply instead of triggering those tough sanctions.

Plaintiffs continue to believe that this 3-part proposal is still the appropriate remedial Order at this time to compel the State government's decision-makers to recognize the urgency of complying with the Court Orders in this case promptly – instead of continuing to delay with promises of "well, maybe next year".

3. The Examples Of Judicial Enforcement Tools Listed In The Show Cause Order Would Be Appropriate If Non-Compliance Continued After The Above 3-Part Order.

Since this Court's Show Cause Order listed many of the enforcement tool examples plaintiffs had noted in their prior briefing, the following subsections answer the State's objections to those examples.

(a) ***1st Example: Imposing monetary or other contempt sanctions*** (Show Cause Order p.4, ¶1)

Plaintiffs' prior briefing noted this type of judicial enforcement tool.[39] The State's Show Cause Response specified two objections:

Fining the State: The State argues this Court should not issue any coercive fine against the State because it might diminish funds needed to comply with the State's paramount constitutional duty to amply fund its K-12 schools.[40]

But the State has never claimed in this case that currently existing revenues are insufficient to amply fund its K-12 schools pursuant to the legal meaning of ***paramount***, ***ample***, ***education***, and ***all*** that were confirmed by the court rulings in this case.[41]

Instead, the State's "available funds" concern is based on State revenues currently being insufficient to satisfy both (a) the State's ***paramount*** duty and (b) all the ***non-paramount*** things State officials want

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[39] *Plaintiffs' **2013** Post-Budget Filing at p.45 & n.135 (citing U.S. v. City of Yonkers, 856 F.2d 444, 460 (2d Cir. 1988), cert. denied, 489 U.S. 1065 (1989) (certiorari separately granted only as to sanctions against individual council members, as addressed in Spallone v. United States, 493 U.S. 265 (1990)); Hutto v. Finney, 437 U.S. 678, 690-691, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978); Delaware Valley Citizens' Council for Clean Air v. Pennsylvania, 678 F.2d 470, 478 (3d Cir.), cert. denied, 459 U.S. 969 (1982)); Plaintiffs' **2014** Post-Budget Filing at p.47 & n.141 (referencing the same).*

Indeed, the contempt chapter cited by the State's Show Cause Response (chapter 7.21 RCW) specifically authorizes fines as a remedial sanction. RCW 7.21.030(2)(b); see also State v. Ralph Williams, 87 Wn.2d at 335-337 (recognizing courts have inherent authority to impose contempt fines beyond those in the statute).

[40] *State's Show Cause Response at p.27.*

[41] *That legal meaning is repeated in Plaintiffs' **2014** Post-Budget Filing at pp.2-4 and Plaintiffs' **2013** Post-Budget Filing at pp.1-2.*

to fund. Since any fine would have to be paid out of the non-paramount category, the State's real concern must be that fining the State would diminish funds available for many of the ***non-paramount*** programs and operations legislators currently find more politically popular than amply funding the State's K-12 schools. That concern, however, only confirms the coercive effect of the Court's acknowledging this enforcement tool as an available option if the State's legislature chooses to continue noncompliance after entry of the 3-part Order plaintiffs proposed.

Fining Legislators: The concept of fining legislators for their failure to timely act is something the Majority Leader of the 63rd legislature has himself proposed in the recent past.[42] The State argues this Court should not issue any coercive fine against legislators, however, because this Court would then have to also fine voters who vote for Initiatives like I-1107.[43]

But voters do not take the oath legislators take promising to uphold our constitution, and voters are not members of the 63rd legislature that violated the Court Orders in this case.

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[42] Seattle Times, *July 9, 2013: "Is it time to fine lawmakers who dawdle? Sen. Tom thinks so", available at http://seattletimes.com/html/localnews/2021362325_tomfinexml.html (Senate majority leader of the 63rd Legislature (Senator Rodney Tom) suggesting fining legislators $250 a day or revoking legislators' per diem for days beyond a regular session as a "forcing mechanism" to ensure timely passage of the state budget).*

[43] *State's Show Cause Response at p.27.*

Example #1 Conclusion: Plaintiffs acknowledge that imposing monetary or other contempt sanctions could make legislative branch officials very uncomfortable. But that's the purpose of remedial sanctions. Coerce compliance – not simply ask for it (again).

(b) ***2nd Example: Prohibiting expenditures on certain other matters until the Court's constitutional ruling is complied with*** (Show Cause Order p.4, ¶2)

Plaintiffs' prior briefing noted this type of judicial enforcement tool.[44] The State's Show Cause Response specified two objections:

Applying To Non-Education Programs: The State notes that in the examples plaintiffs cited, the court had concluded the effective way to apply coercive pressure was to prohibit spending on certain related (but more politically popular) programs – and from that the State argues this Court cannot prohibit expenditures on any non-education programs because they are unrelated to education programs.[45]

But the State ignores the purpose of remedial sanctions. The fact that barring certain related expenditures applied the needed coercive pressure in those other cases doesn't dictate whether barring certain

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[44] *Plaintiffs' **2013** Post-Budget Filing at pp.45-46 & n.136 (citing Dowdell v. City of Apopka, 511 F.Supp. 1375, 1384-1386 (M.D. Fla. 1981), aff'd in relevant part, 698 F.2d 1181 (11th Cir. 1983); Baker v. City of Kissimmee, 645 F.Supp. 571 (M.D. Fla. 1986); Griffin v. Prince Edward County School Board, 377 U.S. 218, 232-233, 84 S.Ct. 1226, 12 L.Ed.2d 256 (1964)); Plaintiffs' **2014** Post-Budget Filing at p.47 & n.142 (referencing the same).*

[45] *State's Show Cause Response at p.24.*

unrelated expenditures would apply the needed coercive pressure in this case.

The State also ignores the constitutionally critical reason why education and non-education programs in our State are unrelated. One involves the State's ***paramount*** duty, and the others do not.

Many Non-Education Programs Are Important: The State also argues this Court cannot prohibit expenditures on any non-education programs because non-education programs have "public value", citizens "rely on them", and courts cannot "determine what programs and services *merit* defunding without assuming a legislative role."[46]

Plaintiffs agree there are non-education programs with public value that many citizens currently rely upon. But that does not change the constitutional fact that the State's funding of such non-education programs is inferior to the ample State funding mandated by Article IX, §1. As this case's Final Judgment aptly noted:

> During the trial, the State cross-examined many of the [plaintiffs'] education witnesses as to whether they would prioritize education at the expense of other worthy causes and services, such as health care, nutrition services, and transportation needs. But this is not the prerogative of these witnesses – or even of the Legislature – that decision has been mandated by our State Constitution. The State must make basic education funding its top legislative priority.[47]

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[46] *State's Show Cause Response at p.24 (italic added).*
[47] *CP 2906, ¶160 (footnote citing Seattle School District v. State omitted).*

Plaintiffs also agree that determining the *merit* of individual non-education programs is not a typical judicial role. But the *merit* of any particular non-education program is not the question here. The question is whether prohibiting (or limiting) State expenditures on any particular non-education program until the legislature complies with this Court's Order can coerce compliance with that Order. If non-compliance continues after entry of the 3-part Order plaintiffs proposed, this Court does have the ability to identify specific non-education programs that it believes would accomplish the coercive purpose of a remedial sanction. (If legislative determination of the relative *merit* of specific non-education programs is essential, the remedial sanction could, for example, list five non-education programs and give the legislature the option to strike up to two from that list.)

(c) 3rd Example: Ordering the legislature to pass legislation to fund specific amounts or remedies (Show Cause Order p.4, ¶3)

Plaintiffs' prior briefing noted this type of judicial enforcement tool.[48] The State's Show Cause Response specified five objections:

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[48] *Plaintiffs' **2013** Post-Budget Filing at p.46 & n.137 (citing Montoy v. Kansas, 112 P.3d 923, 940-941 (Kan. 2005); Arthur v. Nyquist, 547 F.Supp. 468, 484 (W.D.N.Y. 1982), aff'd, 712 F.2d 809 (2d Cir. 1983), cert. denied, 466 U.S. 936 (1984); Missouri v. Jenkins, 495 U.S. 33, 55, 110 S.Ct. 1651, 109 L.Ed.2d 31 (1990); Griffin, 377 U.S. at 233); Plaintiffs' **2014** Post-Budget Filing at p.47 & n.143 (referencing the same).*

Legislative Arena: The State argues that directing the enactment of specific legislation improperly enters into the legislative arena because the legislature possesses the power to pass taxation and appropriation legislation.[49]

Plaintiffs agree the legislative branch has the the power to enact the *means* of amply funding the State's K-12 schools. But that does not preclude the judicial branch from requiring the legislature to *act* under that power by adopting legislation that provides the funding Article IX, §1 requires.

Judicial Edict Rather Than Majority Rule: The State argues that prescribing specific legislation "effectively imposes a judicial edict, rather than a democratic legislative decision arrived at by the representatives of the people of Washington."[50]

But that argument ignores the primacy in our democracy of an individual's constitutional rights over majority rule – a primacy summed up in one of the materials used to teach the State EALR on civics in our schools:[51]

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[49] *State's Show Cause Response at p.18.*

[50] *State's Show Cause Response at p.19.*

[51] *The State's current Civics EALR is stated in the Washington State K-12 Social Studies Learning Standards at p.12 (January 2013, published by the State Superintendent of Public Instruction) ("Social Studies EALR 1: CIVICS - The student understands and applies knowledge of government, law, politics, and the nation's fundamental documents to make decisions about local, national, and international issues and to demonstrate*

Majority rule, minority rights

> When our nation was founded, the people who wrote our constitution worked hard to balance two ideas. The first – majority rule – is the idea that the ultimate power in a democracy is vested in the people. When we elect leaders, the majority of the people – that is, 50% plus one or more – determines who wins.
>
> The second idea relates to "the rule of law." The idea is that the majority shouldn't be able to violate the rights of a minority. ... Our political system is designed to protect minorities by providing all citizens with the same rights, and by giving the Supreme Court the power to strike down any law, no matter how popular, if it violates the rights of even one person. ... [52]

Ordering the legislature to pass legislation to fund identified amounts toward ample school funding (e.g., the State's own QEC, JTFEF, or 2261 Compensation Technical Workgroup figures) does not impose a judicial edict contrary to our constitutional democracy. It instead upholds the positive and paramount constitutional right of Washington children to

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thoughtful, participatory citizenship. Component 1.1: Understands key ideals and principles of the United States, including those in the Declaration of Independence, the Constitution, and other fundamental documents. Component 1.2: Understands the purposes, organization, and function of governments, laws, and political systems") available at http://www.k12.wa.us/SocialStudies/EALRs-GLEs.aspx; that EALR is also at Trial Exhibits 144 & 148. See, e.g., Edmonds School District, Middle School Social Studies Curriculum, District Social Studies Adoption (link at bottom of page) at p.1, available at http://www.edmonds.wednet.edu/Page/476, and Edmonds School District, College Place Middle School, 7th grade Honors Social Studies Academic Plan, Syllabus 7 Honors 2013-14 at p.2, available at http://teacher.edmonds.wednet.edu/cpms/jhaugen/documents (both visited 8/11/2014).

[52] *The State We're In: Your Guide To State, Tribal & Local Government, Chapter 2 "The Design Of Today's Democracy" at pp.20-21, Jill Severn (author), 7th Edition (published by the League Of Education Voters Of Washington Education Fund), available at http://moodle.esd113.org/course/view.php?id=17 (the ESD 113 website). Washington Educational Service District No. 113 (ESD 113) serves the State's 44 public school districts in the Olympia region, http://www.esd113.org/site/default.aspx?PageID=1.*

an amply funded education – even though they are in the political minority since almost all of them are too young to vote.

Federal Court Examples: The State argues federal cases employing this judicial enforcement tool are distinguishable because those cases ordered State officials to act beyond their State law authority, and that was proper because the federal court was "supplementing the official's state law authority by authorizing the official to act as a matter of federal law."[53]

But the State's attempted distinction does not apply here. The ample funding *means* (taxation and appropriation) are within – not beyond – the Washington legislature's State law authority, and the *action* this Court's remedial Order would be coercing (ample funding) is required as a matter of State – not federal – law.

State Court Examples: The State argues the decisions plaintiffs cited from other States do not support this judicial enforcement tool because of what the Kansas Supreme Court did in *Montoy*. After acknowledging that the Kansas Supreme Court "ordered the legislature to increase funding for the upcoming school year by at least $285 million", the State points out that the Kansas Supreme Court did not dictate the

[53] *State's Show Cause Response at p.20 (citing Puget Sound Gillnetters Ass'n v. Moos, 92 Wn.2d 939, 950, 603 P.2d 819 (1979)).*

precise *means* the legislature had to employ to provide that funding, and showed a "pattern of deference to the legislature's constitutional role."[54]

But judicial deference to the legislature's constitutional role does not require judicial indifference to the legislature's ongoing violation of its paramount constitutional duty to establish ample State funding for the State's K-12 schools. This Court has already shown a pattern of patience and deference as the legislature adopted budgets in 2012, 2013, and 2014 that made relatively little progress abating the State's unconstitutional underfunding. And a Court Order requiring the legislature to pass legislation to fund specific amounts or remedies need not dictate the precise *means* the legislature must employ to provide that funding. The State's "distinction" of *Montoy* accordingly does not negate the availability of this enforcement tool to coerce compliance.

Limited State Revenue For Non-Education Programs: The State argues this Court cannot Order specific education funding amounts because "State resources are not unlimited, and school funding decisions cannot be made without considering available revenue, which in turn implicates taxing authority and budget support for other state programs."[55]

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[54] *State's Show Cause Response at pp.21-22.*
[55] *State's Show Cause Response at p.23 (underline added).*

Plaintiffs agree that our State government does not have unlimited resources to provide budget support for all programs elected officials might deem desirable or important. A remedial Order requiring the legislature to fund specific education amounts therefore might (or might not) diminish funds available to support other state programs (depending upon the revenue and expenditure bills the legislature ultimately passes).

But the State's invocation of possible funding impacts on other State programs is constitutionally irrelevant in this case. This Court's January 2012 decision confirmed that the ***paramount*** duty imposed by Article IX, §1 requires the State to amply fund its K-12 public schools "as the State's first and highest priority before any other State programs or operations."[56]

[56] McCleary, *173 Wn.2d at 520 (underline added). That holding rejects the notion that K-12 funding restrictions are necessary to leave money for other important State programs – for the State has never disputed that it currently has plenty of tax revenue to cover the multi-billion dollar increase necessary to amply fund the State's K-12 public schools* ***if*** *the State is required to provide that ample funding first – and that's precisely what this Court held our Constitution requires the State to do: "the State must amply provide for the education of all Washington children as the State's first and highest priority before any other State programs or operations"* McCleary, *173 Wn.2d at 520. This Court similarly rejected the State's prior suggestion that a fiscal crisis can limit the State's constitutionally required ample education funding, reaffirming that the State may* ***not*** *make reductions "for reasons unrelated to education policy, such as fiscal crisis or mere expediency"* McCleary, *173 Wn.2d at 527.*

(d) ***4th Example: Ordering the sale of State property to fund constitutional compliance*** (Show Cause Order p.4, ¶4)

Plaintiffs' prior briefing noted this type of judicial enforcement tool.[57] The State's Show Cause Response specified two objections:

Which Property?: The State argues this Court cannot order the sale of State property to coerce compliance because plaintiffs don't identify the specific property that should be sold.[58]

But neither plaintiffs nor this Court have to identify specific property. This Court can identify general categories of property that must be sold to raise a stated dollar amount (e.g., real estate, vehicles, equipment, etc.), and then allow the legislature to identify the order specific property within that category will be sold if the legislature does not want an across-the-board sale of property in that category until the stated dollar amount is raised.

Or, drawing from the State's comments about this judicial enforcement tool's use in *Reed*,[59] this Court could simply order the proceeds of all unencumbered property the State sells to be distributed to

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[57] *Plaintiffs' **2013** Post-Budget Filing at p.46 & n.139 (citing Reed v. Rhodes, 472 F.Supp. 623 (N.D. Ohio 1979)); Plaintiffs' **2014** Post-Budget Filing at p.47 & n.144 (referencing the same).*

[58] *State's Show Cause Response at p.28.*

[59] *State's Show Cause Response at p.28, n.28 (citing Reed v. Rhodes, 472 F.Supp 623 (N.D.Ohio 1979)).*

its K-12 schools to supplement (not supplant) the State funding it otherwise provides.

Instability Of One-Time Funding Source: Citing this Court's 1978 *Seattle School District* decision, the State argues this Court cannot order the sale of State property to coerce compliance with Court Orders because the one-time sale of property does not "provide a 'dependable and regular' revenue source for ongoing basic education funding."[60]

Plaintiffs agree that ever since this Court's 1978 *Seattle School District* decision, the State has well known about its unconstitutional failure to provide a dependable and regular revenue source for amply funding its K-12 schools. But the State's reliance on that failure here ignores the point of a coercive sanction. The primary purpose of this enforcement tool is to compel the legislature's compliance with the Court Orders in this case – not to establish a stable and dependable revenue source for amply funding the State's K-12 schools.

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[60] *State's Show Cause Response at p.28 (citing Seattle School District v. State, 90 Wn.2d 476, 522, 585 P.2d 71 (1978)). The State's now acknowledging that one-time funding cannot satisfy its Article IX, §1 duty is also fatal to the State's claim that it "increased" K-12 funding by almost a billion dollars in the last biennium budget since that $982 million gross (only $649 million net) was largely achieved with one-time transfers, one-time revenues, and one-time "savings" (i.e., cuts). See Plaintiffs' 2013 Post-Budget Filing at pp.14-15 & n.41 (regarding the net as opposed to gross numbers); State of Washington, Senate Ways & Means Committee, "2013-15 Operating Budget Overview: Striking Amendment to 2ESSB 5034" pp.2-5 (June 27, 2013), available at http://leap.leg.wa.gov/leap/Budget/Detail/2013/soHighlights_0627.pdf (regarding such one-time transfers, revenues, and savings).*

Conclusion: Plaintiffs understand the concern that ordering the sale of State property would put the legislature in a very difficult position if it opts to continue its noncompliance with the Court Orders in this case. But since the purpose of a remedial sanction is to coerce compliance, that difficulty supports – rather than negates – the appropriateness of this judicial enforcement tool here.

(e) ***5th Example: Invalidating education funding cuts to the budget*** (Show Cause Order p.4, ¶5)

Plaintiffs' prior briefing noted this type of judicial enforcement tool.[61] The State's Show Cause Response specified the following objection:

Which Cuts?: The State acknowledges this Court "unquestionably has authority to invalidate unconstitutional statutes".[62] But it then argues this Court cannot invalidate legislative bills that made education funding cuts to the budget after this Court's January 2012 decision because plaintiffs did not identify any of those bills in their Complaint many years earlier.[63]

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[61] *Plaintiffs' **2013** Post-Budget Filing at p.46 & n.140 (citing Abbott ex rel. Abbott v. Burke, 20 A.3d 1018, 1024, 1045 & n.23 (N.J. 2011)); Plaintiffs' **2014** Post-Budget Filing at p.47 & n.145 (referencing the same).*

[62] *State's Show Cause Response at p.25.*

[63] *State's Show Cause Response at p.25.*

The State's argument makes no sense since cuts made after this Court's decision cannot be identified before this Court's decision. For example, when the 63rd legislature first convened in January 2013, Washington law provided the annual Cost Of Living Adjustments (COLAs) mandated by voters in I-732 would be paid by the State in the 2013/2014 and 2014/2015 school years.[64] The 63rd legislature then passed a bill that cut those COLAs by "suspending" Initiative 732 for those two years.[65] Such a cut made after this Court's decision could not be identified before this Court's decision.

In the context of this litigation, both the State and this Court know what an education funding cut looks like, and can readily identify bills adopted after this Court's January 2012 decision that made such cuts.

One quick example is the previously-noted bill eliminating the statutory requirement that the State fund the I-732 COLAs in the the 2013/2014 and 2014/2015 school years. The 63rd legislature knew when it passed that bill in 2013 that it was already unconstitutionally underfunding the State's K-12 schools, knew that it was under Court Order to make steady, real, and measurable progress forward to eliminate that

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[64] *RCW 28A.400.205; Laws of 2011, 1st Spec. Sess., ch. 18, §1(1)(a) ("suspending" COLAs for the 2011-12 and 2012-13 school years only).*

[65] *Laws of 2013, 2nd Spec. Sess., ch. 5, §1(1)(a) ("suspending" COLAs for the 2013-14 and 2014-15 school years).*

underfunding, but instead took a large step backwards by eliminating the I-732 COLAs that voters had mandated from its funding.

Plaintiffs recognize that this Court's invalidating such cuts would put legislators in a difficult spot since those cuts "saved" State revenue for other programs they deemed more politically popular to fund. But since the purpose of a remedial sanction is to coerce compliance with this Court's Orders, that difficulty supports the appropriateness of this judicial enforcement tool here.

(f) ***6th Example: Prohibiting any funding of an unconstitutional education system*** (Show Cause Order p.4, ¶6)

Plaintiffs' prior briefing noted this type of judicial enforcement tool.[66] The State's Show Cause Response specified three objections:

Harming Kids: The Court rulings in this case have long confirmed that the State's K-12 funding (and thus the legislation establishing that funding) is unconstitutional.[67] And the State acknowledges this Court "unquestionably has authority to invalidate unconstitutional statutes".[68]

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[66] *Plaintiffs' **2013** Post-Budget Filing at pp.46-47 & n.141 (citing Montoy v. Kansas, No. 99-C-1738, Decision and Order Remedy (May 11, 2004), 2004 WL 1094555, at *11; Hull v. Albrecht, 960 P.2d 634, 640 (Ariz. 1998); Robinson v. Cahill, 358 A.2d 457 (N.J. 1976); Inmates of Suffolk County Jail v. Kearney, 573 F.2d 98 (1st Cir. 1978)); Plaintiffs' **2014** Post-Budget Filing at p.47 & n.146 (referencing the same).*

[67] *Plaintiffs' **2014** Post-Budget Filing, pp.4-5; Plaintiffs' **2013** Post-Budget Filing, p.2.*

[68] *State's Show Cause Response at p.25.*

The State nonetheless argues this Court should reject the suggestion that it can invalidate statutes establishing the State's unconstitutional education system because it would harm kids:

> This suggestion assumes no education is preferable to the education students in Washington currently are receiving. In fact, it would most directly harm the very schoolchildren Plaintiffs claim to be advocating for.[69]

This same "harm" argument, however, would require courts to reject the suggestion that they can invalidate all sorts of unconstitutional statutes. For example:

- Courts should not invalidate a State statute that establishes an unconstitutional segregated school system, because that would "assume no education is preferable to the education minority students currently are receiving. In fact, it would directly harm the very schoolchildren that plaintiffs claim to be advocating for."
- Courts should not invalidate a State statute that unconstitutionally provides defense counsel to only about three-quarters of the defendants entitled to such counsel under *Gideon v. Wainwright*,[70] because that would "assume for three-quarters of such defendants that no counsel is preferable to the counsel they currently are receiving. In fact, it would directly harm most of the criminal defendants that plaintiffs claim are protected by the *Gideon* case."
- Courts should not invalidate a State statute that unconstitutionally funds significantly less than fair market value for takings, because that would "assume no compensation is preferable to the compensation property owners currently are receiving. In fact, it would directly harm the very property owners that plaintiffs claim to be advocating for."

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[69] *State's Show Cause Response at p.28.*

[70] *Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).*

The tragic fact of this matter is that the unconstitutionally underfunded K-12 school system established by Washington's public school statutes has been violating the paramount constitutional right of Washington children for far too long. Indeed, since before this Court issued its *Seattle School District* decision in 1978 – when Carter and Kelsey McCleary's mom (Stephanie) was 13 years old, and when Robbie and Halie Venema's mom (Patty) was in high school.[71] If the State's professed concern about kids' K-12 education were really more than just a convenient argument to try to avoid a remedial order in this case, the 63rd legislature would not have knowingly failed to comply with this Court's prior Orders.

Only A Few Days In New Jersey: The State's Show Cause Response does not dispute that orders threatening to stop all unconstitutional education funding (close schools) have been used to coerce the legislature's compliance with court orders in Kansas, Arizona, and New Jersey education funding cases.[72] Instead, it suggests this enforcement tool should be disregarded as insignificant because schools

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[71] *CP 2876-2877 (February 2010 Final Judgment at ¶¶ 13-20).*

[72] *See Montoy v. Kansas, No. 99-C-1738, Decision and Order Remedy (May 11, 2004), 2004 WL 1094555, at *11 (enjoining use of unconstitutional education funding statutes and putting the school system on "pause" until funding defects remedied); Hull v. Albrecht, 960 P.2d 634, 640 (Ariz. 1998) (affirming order enjoining use of unconstitutional education funding statutes); Robinson v. Cahill, 358 A.2d 457 (N.J. 1976) (enjoining State from expending any funds for the support of schools under unconstitutional system (with limited enumerated exceptions) unless the State fully funded education statute within seven weeks).*

were ultimately closed for only a few summer days as a result of the remedial order in *Robinson v. Cahill*, 358 A.2d 457 (N.J. 1976).[73]

But *Robinson* confirms (rather than minimizes) the effectiveness of this judicial enforcement tool. Having determined that unconstitutional funding "into yet another school year cannot be tolerated", the New Jersey Supreme Court ordered that education funding would be enjoined starting July 1 (the first day of the next school year) if funding was not provided before then. *Id.* at 459-60. After the order took effect, the Legislature promptly passed funding legislation within days.[74]

Plaintiffs' Constitutional Ideal: The State argues this enforcement tool cannot be used because it "contravenes the constitutional ideal [plaintiffs] purport to uphold."[75]

The State's argument, however, ignores what it recognizes is the purpose of a remedial sanction – namely, to coerce compliance with this Court's Orders. Not to enforce plaintiffs' "constitutional ideal."

The State also mischaracterizes plaintiffs' constitutional ideal.

Plaintiffs believe the State is violating the paramount, positive constitutional right of all Washington children to an amply funded K-12

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[73] *State's Show Cause Response at p.29.*

[74] *See Robinson v. Cahill, 360 A.2d 400 (July 9, 1976) (dissolving injunction after enactment of full funding legislation).*

[75] *State's Show Cause Response at p.29.*

education. This Court's January 2012 decision and ensuing Orders have repeatedly confirmed that plaintiffs are correct.

Plaintiffs believe that State officials are not above the law, and that the State of Washington must comply with its ***paramount*** duty under the Constitution of Washington. This Court's ensuing Orders have repeatedly sought to secure that compliance.

And Plaintiffs believe that State government officials must obey State Supreme Court Orders. It is this last "ideal" that is at issue in this show cause proceeding – for the 63rd legislature has knowingly been failing to comply with the Court Orders in this case.

(g) ***7th Category: Any other appropriate relief*** (Show Cause Order p.4, ¶7)

As noted in Part III.C.2 above, plaintiffs believe the 3-part Order they previously proposed remains the appropriate relief at this time.

D. ***Timing:* The 3-Part Enforcement Order Should Be Issued Before The 63rd Legislature Ends.**

This was not the first time the 63rd legislature failed to comply with a Court Order in this case. It failed to comply with this Court's December 2012 Order in any of its four **2013** sessions. Then it failed to comply with this Court's January 2014 Order in its **2014** session.

The 63rd legislature will be replaced by the 64th legislature soon after the close of this year.[76] To focus the coercive effect that the State's brief acknowledges should be the purpose of sanctions in this case, this Court should accordingly require the 63rd legislature to comply with this Court's January 2014 Order by the end of this year (December 31, 2014).

To ensure that no one underestimates the seriousness and urgency at hand, this Court's enforcement Order should also make it unequivocally clear to legislators planning to return for the ensuing 64th legislature that, if non-compliance continues past that December 31, 2014 date, this Court will in January 2015 issue strong enforcement orders to coerce compliance with the Court Orders in this case – Orders which might include some of the previously-discussed enforcement tools used to coerce elected officials to comply with court orders and citizens' constitutional rights.

The State, however, makes three arguments why this Court should do nothing until after the legislature's 2015 session is over:

Full & Fair Opportunity: The State says this Court should give the legislature "a full and fair opportunity to act in 2015", and thus "No sanction of any kind should be considered until that time."[77]

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[76] *The 63rd legislature's replacement, the 64th legislature, will first convene on January 12, 2015. See, State of Washington, "Members of the Legislature: 1889-2014" p.4 (2014 ed.), available at http://www.leg.wa.gov/LIC/Documents/SubscriptionsEndOfSessionHistorical/MembersOfLeg.pdf.*

[77] *State's Show Cause Response at pp.3-4.*

But the State's legislature has had 4½ years of opportunity to act since the binding February 2010 Final Judgment in this case, and over 2½ years of opportunity to act since this Court's January 2012 decision. The State's Show Cause Response did not provide any credible justification for yet again requesting more time.

More Promises: The State promises that, *this time*, the Governor and legislators will prepare for complying with the Court Orders in this case – and "[t]he imposition of sanctions will not increase the urgency of these preparations for the 2015 legislative session."[78]

But one of the perennial problems in this matter has long been the State's ongoing lack of urgency and its corresponding willingness every year to kick its paramount Article IX, §1 duty down the road until "maybe next year" – despite this Court's 2012, 2013, and 2014 Orders mandating steady, real, and measurable progress those years. As plaintiffs' 2014 post-budget filing explained, the State's track record in this case confirms that this Court must create a sense of urgency for the State's compliance, rather than once again accept the State's now-familiar promise that it will comply next year.[79]

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[78] *State's Show Cause Response at p.30.*
[79] *Plaintiffs' **2014** Post-Budget Filing at pp.44-45.*

Cool Your Jets: The State argues no remedial sanction is needed because if this Court just waits until after the 2015 session is over, this Court will then be able to figure out the State's "de facto complete plan for meeting the 2018 deadline" by simply looking at what the legislature did for the 2015/2017 biennium, and assuming the State must be planning to complete everything else for that deadline's 2017/2018 school year in the ensuing 2017/2019 biennium budget.[80]

But the Court Orders in this case did not say "show us the 2015/2017 budget, and we'll assume you'll complete the rest in the next budget." The State's responding "hey, just look at what we do in the 2015/2017 budget and assume we'll complete the rest in the next budget" accordingly does not comply with the Court Orders in this case. This Court required the State to (1) make steady, real, and measurable progress toward meeting the 2017/2018 school year deadline the State had promised to this Court, and (2) submit a year-by-year plan for how the State planned to meet that deadline. The State's argument that this Court should be able to figure out the State's plan for amply funding its K-12 schools by just looking at the 2015 session's budget does not comply with those Court Orders. The State's argument accordingly does not support its

[80] *State's Show Cause Response at p.30.*

demand that this Court delay any remedial Order at all until the session next year is over.

IV. CONCLUSION

This Court previously told legislators, parents, and students alike that "Year 2018 remains a firm deadline for full constitutional compliance."[81] This Court's Orders have also reiterated that

> Given the scale of the task at hand, 2018 is only a moment away ....
>
> We cannot wait until "graduation" in 2018 to determine if the State has met minimum constitutional standards.[82]

Since the State's **2012** and **2013** legislative sessions failed to make significant progress curing the State's unconstitutional underfunding by that 2018 deadline, this Court ordered the State's **2014** session to:

> (1) take "immediate, concrete action" to make "real and measurable progress, not simply promises" to meet that 2018 full funding deadline; and
>
> (2) submit a "complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year" – including "a phase-in schedule for fully funding each of the components of basic education" identified in ESHB 2261 and SHB 2776.

January 2014 Order at p.8 (underline added). This Court's Order also reiterated to the 63rd legislature that:

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[81] *December 20, 2012 Order at p.2 (underline added).*
[82] *December 20, 2012 Order at pp.2-3.*

> The need for immediate action could not be more apparent. Conversely, failing to act would send a strong message about the State's good faith commitment toward fulfilling its constitutional promise.

January 2014 Order at p.8 (underline added). In short, this Court made the urgency for significant action (instead of just promising words) clear to the 63rd legislature.

But obviously not clear enough. Legislators chose to adjourn and leave town as soon as their 60-day "regular" session was over – knowing that they were failing to comply with this Court's Orders, and knowing that their failure sent this Court a strong message about their commitment to timely fulfill the State's ***paramount*** duty under our State Constitution.

This Court must decide if Washington schoolchildren's positive constitutional right to an amply funded education really matters. If it does, this Court must issue an even stronger, even more unequivocal Order to effectively uphold and enforce that constitutional right.

Conversely, this Court's failing to do so will teach Washington students and their parents that court orders and constitutional rights are just meaningless words. A constitutional right isn't really a right – just a nice sounding platitude. Elected officials don't have to obey the constitution – they're above it. Court orders aren't a mandate – just a

suggestion. And judges don't hold all citizens accountable to obey the law – just the common folk who lack titles like "senator" or "representative".

Plaintiffs continue to believe that those are not the constitutionally correct lessons to teach. Plaintiffs continue to believe that court orders and constitutional rights really do matter. And that this Court should accordingly issue the 3-part enforcement Order proposed in plaintiffs' 2014 post-budget filing to coerce compliance with the Orders this Court previously entered to ensure our State government stops its violation of Washington schoolchildren's positive constitutional right to an amply funded K-12 education by no later than this case's firm 2017/2018 school year deadline for full constitutional compliance:

- **One:** Hold the State's legislature in contempt of court until it complies with the Court Orders in this case.
- **Two:** Enjoin the State from making the unconstitutional underfunding of its K-12 schools worse by imposing any more unfunded or underfunded mandates on them.
- **Three:** Give the State advance warning that if its 63rd legislature does not comply with this Court's January 2014 Order by the end of December 2014, this Court will in January 2015 issue strong judicial enforcement orders to coerce compliance.

The State's Show Cause Response boils down to the proposition that its legislators should be allowed more delay to take their time addressing the Final Judgment entered in this case over 4½ years ago. But

legislators aren't taking their time. They're taking the time of Washington's schoolchildren. Time that, once lost, can never be recovered. As the State Board of Education's Mary Jean Ryan succinctly put it in this case's 2009 trial: "The 1 million children in our state's public schools can ill afford more delay. They get only one shot at their education."[83] For the reasons outlined in this Answer to the State's Show Cause Response, plaintiffs respectfully ask this Court to not ignore or condone the State legislature's knowing violation of the Court Orders this Court issued to bring a timely halt to the State's years of delay in fulfilling every Washington child's positive constitutional right to an amply funded K-12 education.

RESPECTFULLY SUBMITTED this 11th day of August, 2014.

Foster Pepper PLLC

s/ Thomas F. Ahearne
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[83] *Trial Ex. 238, last paragraph; RP 2431:9-20. This Court's December 2012 Order likewise noted that "Each day there is a delay risks another school year in which Washington children are denied the constitutionally adequate education that is the State's paramount duty to provide." December 2012 Order at pp.2-3.*

DECLARATION OF SERVICE

Adrian Urquhart Winder declares:

I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of twenty-one years. I am not a party to this action, and I am competent to be a witness herein. On Monday, August 11, 2014, I caused PLAINTIFFS' ANSWER TO DEFENDANT'S RESPONSE TO THE COURT'S SHOW CAUSE ORDER to be served as follows:

William G. Clark Office of the Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 billc2@atg.wa.gov *Defendant State of Washington*	☒ Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing) ☒ Via U.S. First Class Mail
David A. Stolier, Sr. Alan D. Copsey Office of the Attorney General 1125 Washington Street SE Olympia, WA 98504-0100 daves@atg.wa.gov alanc@atg.wa.gov *Defendant State of Washington*	☒ Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing) ☒ Via U.S. First Class Mail
Stephen K. Eugster 2418 West Pacific Avenue Spokane, WA 99201-6422 eugster@eugsterlaw.com *Amicus Curiae*	☒ Via Electronic Mail (cc of the same email sent to the Supreme Court for the filing) ☒ Via U.S. First Class Mail ☒ Via Hand Delivery

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Amici Curiae Applicants The Honorable Daniel J. Evans, The Honorable John Spellman, The Honorable Mike Lowry, The Honorable Gary Locke, and The Honorable Christine Gregoire

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED in Seattle, Washington, this 11th day of August, 2014.

s/ Adrian Urquhart Winder
Adrian Urquhart Winder

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
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Subject: RE: McCleary v. State (Supreme Court No. 84362-7) - Plaintiffs' Answer To Defendant's Response To The Court's Show Cause Order

Received 8/11/14

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Subject: McCleary v. State (Supreme Court No. 84362-7) - Plaintiffs' Answer To Defendant's Response To The Court's Show Cause Order

Dear Clerk of the Court:

Please find attached for filing with the Court the following document: **Plaintiffs' Answer To Defendant's Response To The Court's Show Cause Order**.

- **Case:** McCleary et al. v. State, Case No. 84362-7
- **Court:** Supreme Court of the State of Washington
- **Counsel for Plaintiff/Respondents**: Thomas F. Ahearne, (206) 447-8934, WSBA No. 14844, ahearne@foster.com; Christopher G. Emch, (206) 447-8904, WSBA No. 26457, emchc@foster.com; Adrian Urquhart Winder, (206) 447-8972, WSBA No. 38071, winda@foster.com

Please contact me if there is any problem opening this .pdf.

Thank you,

Adrian

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